ONG CHEE SEONG v. ATTORNEY-GENERAL & ORS.

[O.C.J. (Syed Othman J.) April 11, 1976]
[Johore Bahru — Petition for Admission No. 78 of 1975]

Legal Profession — Advocate and solicitor — Admission as — Reading in Chambers — Shortening of period — "Special grounds" — Advocates and Solicitors Ordinance, 1947 s. 5(5).

The petitioner, an assistant superintendent of police sought shortening of the period of reading in chambers by 6 months for admission as an advocate and solicitor. The respondents, the Attorney-General, Malaysia, Bar Council, States of Malaya and Bar Committee of Johore objected to the application. The facts of the case were as follows: The petitioner joined the police force as a probationary inspector on September 8, 1954 and was promoted to the rank of an assistant superintendent of police on September 1, 1962. He was a prosecuting officer in the Magistrate's and Sessions Court in Bentong, Klang and Muar for about 2 years. He was admitted to the Middle Temple, London on January 23, 1962. On March 15, 1974 he was given no pay study leave to pursue his law studies in London. After passing his examinations he was called to the English Bar on July 17, 1975. Returning here, he read in the chambers of Mr. Wong Kim Fatt of Messrs. Allen & Gledhill for 6 months. Before the expiry of his study leave, on November 16, 1975 he was called to duty and was unable to do any post final course in London or here. He was posted as officer-in-charge of courts, Johore Bahru. He has been a prosecuting officer of the Sessions Courts since January 10, 1976.

Held: (1) in determining what "special grounds" are, the court should consider whether these are special or peculiar background, qualifications, inherent quality, circumstances or attributes of a petitioner which merit dispensation or shortening of the reading period. Public service or experience in legal work, whether before or after qualification is a factor which the court may take into consideration. As an example, a person who has worked in a legal firm for many years and who subsequently becomes qualified should be given special consideration because of his past experience;

(2) the fact that the petitioner had served in the police force for over 20 years should be given special consideration by reason of the nature of work in law enforcement;

(3) as an officer he had the particular advantage in that he had the experience in dealing with men. He was approaching middle age and must have maturity in outlook which gave him another advantage over young barristers when dealing with his fellow men. As a prosecuting officer in the court he had to deal with many cases. In considering all these one should accept that prosecuting officers in the lower courts bear the brunt of the prosecution work for the Attorney-General's Chambers. They are the ones who translate police investigation work into results. These considerations are special grounds if not for dispensing, at least for shortening the period of reading in chambers;

(4) in this case, as regards other aspects of the work of an advocate and solicitor, Mr. Wong Kim Fatt in his certificate said that the petitioner had received instructions or gained experience in the branches of the law specified therein, had been diligent in his work and had personally satisfied himself that the petitioner had adequate professional experience to qualify him to practice. The objectors did not dispute this. The court had to accept the words of a senior member of the Bar. With this certificate and the special attributes and circumstances and background of the petitioner which the court considered to be special grounds as contemplated by law, this was the least the court could do to show recognition to a man who had served the country in law enforcement and assisted the courts in the administration of justice.

Cases referred to:-

(1) *Williamson* v. *North Straffordshire Railway Company* 32 Ch. D. 399.

(2) *Paine* v. *Chisholm* [1901] 1 Q.B. 531.

PETITION FOR ADMISSION.

C. Paramjothy for the petitioner.

Suleiman bin Hashim (State Legal Adviser) for the Attorney-General.

Upali Masacorale for the Bar Council.

S. Balarajah for the Bar Committee, Johore.

Syed Othman J.: The petitioner, an assistant superintendent of police, seeks shortening of the period of reading in chambers by 6 months for admission as an advocate and solicitor. All the three respondents object to the application.

The petitioner joined the police force as a probationary inspector on September 8, 1954 and was promoted to the rank of an assistant superintendent of police on September 1, 1962. He was a prosecuting officer in the Magistrate's and Sessions Court in Bentong, Klang and Muar for about 2 years. He was admitted to the Middle Temple, London on January 23, 1962. On March 15, 1974 he was given no pay study leave to pursue his law studies in London. After passing his examinations he was called to the English Bar on 17th day of July, 1975. Returning here, he read in the chambers of Mr. Wong Kim Fatt of Messrs. Allen & Gledhill for 6 months. Before the expiry of his study leave, on November 16, 1975 he was called to duty and was unable to do any post final course in London or here. He was posted as officer-in-charge of courts, Johore Bahru. He has been a prosecuting officer of the Sessions Courts since January 10, 1976.

Arguments by the objectors are focussed on section 5(5) of the Advocates and Solicitors Ordinance, 1947 (the Ordinance) which reads:

"The court may, on application and on special grounds, one of which may be that the petitioner has been engaged in any part of His Majesty's dominions in the active practice of his profession after having qualified as a Barrister of England or Northern Ireland (or of Ireland if called before the first day of October, 1921) or as a member of the Faculty of Advocates in Scotland or a solicitor of the Supreme Court of Judicature of England or Northern Ireland (or of Ireland admitted before the first day of October, 1921), or Writer to the Signet or a solicitor in Scotland or as an Advocate and solicitor in the Colony, to be stated on affidavit or statutory declaration to be filed in court seven clear days before the same is used, by order shorten the period during which the notice referred to in sub-section (2) of this section is required to be posted and may by order shorten or dispense with the period during which the petitioner is required to attend and receive instruction in law in an office, or to read in chambers, and may, if it thinks fit, admit and enrol the petitioner at any time."

Encik Masacorale on behalf of the Bar Council submits that the special grounds referred to in the subsection must relate to experience after qualification and that experience before qualification should not be taken as special grounds. Encik Balarajah of the Johore Bar Committee, while conceding that the court has a discretion, seems to be of the view that there must be some similar qualifications to those mentioned in the subsection before there can be any dispensation or shortening of the period of reading in chambers.

I have traced some English authorities which have some bearing in the argument that special grounds must relate to specified matters. I need only cite two here.

In *Williamson* v. *North Straffordshire Railway Company*(1) the principle adopted seems to be that special grounds must relate to the importance or difficulty of the cause or matter which justifies the award

of costs on a higher scale. In *Paine* v. *Chisholm*[2] Fry L.J. said at page 537: —

"... In my opinion, this is a case in which a discretion is given to the judge only in a certain contingency or upon certain conditions. The question whether that contingency had occurred, or whether those conditions have been fulfilled, must be matter of appeal; for, if not, the judge had no jurisdiction to make the order that he did. The contingency is defined in these terms. The judge may make the order 'upon special grounds arising out of the nature and importance, or the difficulty or urgency of the case.' It is to be observed, therefore, that there must be 'special grounds.' What the precise meaning of that expression may be it is difficult to define; but it is at any rate clear that it cannot apply unless there is something peculiar and special in the circumstances of the case. Again, the special grounds must arise from the nature and importance, or from the difficulty, or from the urgency of the case."

In these cases it will be observed that the rule provides for making an order "upon special grounds arising out of the nature and importance, or the difficulty or urgency of the case." On the very wording of the rule, special grounds must relate to matters which had arisen. In any case, what is important is that it is a matter for the court to determine what are these difficult or special circumstances.

Section 5(5) of the Ordinance is differently worded. "Special grounds" here must be treated as general or generic in intent. The practice specified after qualification as a barrister of England etc. is merely a particular species. As Encik Balarajah puts it, any of the experience gives the court the option to exercise its discretion. I do not think the general term should be taken as restrictive in that it must relate to experience of a petitioner after qualification as a barrister or to similar qualification. If in fact it must be said that "special grounds" to be so restrictive, then I think there must have been some remiss when no objection on these grounds were raised to dispensation on the admission in the past of some personages who did not have the experience or similar qualification. On this consideration, I agree with Encik Balarajah when he says that "special grounds" are a matter for the court to determine in each particular case. In determining what they are, I think the court should consider whether these are special or peculiar background, qualifications, inherent quality, circumstances or attributes of a petitioner which merit dispensation or shortening of the reading period. Public service or experience in legal work, whether before or after qualification, is a factor which the court may take into consideration. As an example, a person who has worked in a legal firm for many years and who subsequently becomes qualified should be given special consideration because of his past experience.

If I am not mistaken, before the enactment of section 8A of the Ordinance which relates to *ad hoc* admission where the petitioner had any of the experience specified in section 5(5) of the Ordinance, full dispensation was usually granted, mainly to allow him to appear in what was considered to be a special case though in effect he would be fully admitted. Under present conditions, I believe it would be rare indeed to have any Malaysian with any of the experience. The provision is a vestige of conditions in pre-Merdeka era. I also believe that barristers of Ireland who were called before October 1, 1921 mentioned in the subsection must be by now a dying, if not an extinct, species. In any case, I am of the view that under the provision even with any of the experience it is still a matter for the court to determine whether or not there should be dispensation or shortening of the period of reading in chambers.

In the present case, the petitioner has served the police force for 20 years, in the course of which he has served the courts for 2 years. By reason of exigency of service he could not continue to read in chambers for the full period of 12 months. To my mind the fact that the petitioner has served in the police force for over 20 years should be given special consideration by reason of the nature of work in law enforcement. He must have passed local law examinations for police officers. He is trained not only to collect and evaluate evidence, but also to make decisions and give directions in the development of a case. As an officer he has the particular advantage in that he has the experience in dealing with men. He is approaching middle age and must have maturity in outlook, which gives him another advantage over young barristers, when dealing with his fellow men. As a prosecuting officer in the courts he is an officer of the court and performs the same nature of work as a barrister in a criminal case. In his daily work as a prosecuting officer he has to deal with many cases. In a month a barrister may have only one case or two cases against him but he has to deal with many cases against different barristers; in fact he deals with more cases in court than a deputy public prosecutor. In conducting cases in preliminary enquiries, Magistrates' courts rely on him to present evidence; in fact he paves the way for officers from the Attorney-General's chambers to prosecute in the High Court. From what I have seen, deputy public prosecutors prosecuting in the High Court, mostly use the materials presented by prosecuting officers in preliminary enquiries. Considering all this, I feel that one should accept that prosecuting officers in the lower courts bear the brunt of the prosecution work for the Attorney-General's chambers. They are the ones who translate police investigation work into results.

These considerations to my mind are special grounds if not for dispensing, at least for shortening the period of reading in chambers. I cannot see that it would be necessary for a person of the petitioner's standing and background to undergo the full period of reading in chambers. As a prosecuting officer he has to make decisions at every turn of a trial, whether it be on law or fact. He gets the real feel of a live case — much more than one can hope to get in a moot or mock trial. Before qualification the petitioner was good enough to appear on behalf of the public prosecutor in court against qualified men. Now with his qualification and half the period of reading in chambers, the very people who accepted his work as worthy of a barrister have a turn of mind and say he is not good enough to be with them.

It may be said that the petitioner's work is only one aspect of that of an advocate and solicitor, but I consider it about the most important. In my view a person who has been trained to investigate, collate

and lead evidence in criminal cases should have no difficulty in civil cases. This is borne by the fact that there are practitioners who appear only in civil cases, and rarely in criminal trials because of the tension the trials generate.

In any case, as regards other aspects of the work of an advocate and solicitor, Mr. Wong Kim Fatt in his certificate says that the petitioner has received instructions or gained experience in the branches of the law specified therein, has been diligent in his work, and has personally satisfied himself that the petitioner had adequate professional experience to qualify him to practice. The objectors do not dispute this. I have to accept the words of a senior member of the Bar. With this certificate and the special attributes and circumstances and background of the petitioner, which I consider to be special grounds as contemplated by law, I feel this is the least that I can do to show recognition to a man who has served the country in law enforcement and assisted the courts in the administration of justice.

I allow the petition and admit the petitioner.

Petition allowed.

Solicitors: *Wong & Paramjothy.*

LAU DAK KEE v. PUBLIC PROSECUTOR

[A.Cr.J. (Mohamed Azmi J.) May 12, 1976]
[Kuala Lumpur — Criminal Appeal No. 134 of 1975]

Constitutional Law — Freedom of Speech — Contravention of condition of licence to convene a political rally — Appellant charged and convicted — Appeal against conviction — Whether condition was ultra vires art. 10 of the Federal Constitution and therefore void — Police Act 1967, s. 27(2) — Federal Constitution, Article 10.

The appellant was found guilty and convicted for having contravened condition No. 14 of the licence issued by the O.C.P.D. The charge against him was as follows:—

"That you on May 20, 1973 at about 10.45 p.m. at Padang Balai Raya, Subang New Village, in the district of Petaling Jaya, in the State of Selangor, contravened a condition of a licence (No. 297276) to convene an assembly issued to one MADHAVAN NAIR by the Ketua Police Daerah, Petaling Jaya, to wit, you spoke on the issue of the M.C.E. results in contravention of condition 14 of the said licence which specified that, *'Tajuk Syarahan tidak boleh menyetoh perkara-perkara berhubong dengan keputusan MCE'*, and that you have thereby committed an offence under section 27(4)(b) of Police Act, No. 41/67 and punishable under section 27(8) of the said Act."

When the defence was called by the learned Magistrate, the appellant elected to remain silent. Consequently, he was convicted of the charge and sentenced to a fine of $500. He appealed against conviction and contended, *inter alia*, that under section 27 of the Police Act, the O.C.P.D. had no power to impose condition 14. Condition 14 was *ultra vires* article 10 of the Federal Constitution and therefore void.

Held, dismissing the appeal: (1) the O.C.P.D. was acting within the law in imposing condition 14 of the licence;

(2) condition 14 was not *ultra vires* the provisions of article 10(2) of the Federal Constitution and it was within the spirit and ambit of section 27(2) of the Police Act 1967.

Case referred to:-

(1) *Madhavan Nair & Anor.* v. *Public Prosecutor* [1975] 2 M.L.J. 264.

CRIMINAL APPEAL.

Karpal Singh for the appellant.

Abdul Kadir bin Musa (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi J.: The appellant was found guilty and convicted in the Magistrate's Court Petaling Jaya of the following charge:

"That you on May 20, 1973 at about 10.45 p.m. at Padang Balai Raya, Subang New Village, in the district of Petaling Jaya, in the State of Selangor, contravened a condition of a licence (No. 297276) to convene an assembly issued to one MADHAVAN NAIR by the Ketua Polis Daerah, Petaling Jaya, to wit, you spoke on the issue of the MCE results in contravention of condition 14 of the said licence which specified that, 'Tajuk Syarahan tidak boleh menyetoh perkara-perkara berhubong dengan keputusan MCE,' and that you have thereby committed an offence under section 27(4)(b) of Police Act No. 41/67 and punishable under section 27(8) of the said Act."

When the defence was called by the learned Magistrate, the appellant elected to remain silent. Consequently, he was convicted of the charge and sentenced to a fine of $500. He now appeals only against conviction.

Briefly, the case of the prosecution was that one Madhavan Nair applied to the Officer-in-Charge of Police District Petaling Jaya for a licence to convene a political rally on May 20, 1973 from 7.00 p.m. to 12.00 midnight at the field in front of the Subang New Village Community Hall. A licence was accordingly issued by the O.C.P.D. to Madhavan Nair subject to fourteen conditions as contained in Exhibit P3 in accordance with section 27(2) of the Police Act No. 41 of 1967. Condition No. 14 provides:

"Tajuk syarahan tidak boleh menyentoh perkara-perkara berhubong dengan keputusan M.C.E. dan kedudukan Bahasa Malaysia sebagai Bahasa Resmi mengikut Perlembagaan Negara."

Thus, under condition 14, no speaker at the rally should touch on matters relating to the M.C.E. results and the status of Bahasa Malaysia as the national language as laid down in the Federal Constitution. Attached to the licence was also a list of authorised speakers at the rally (Exhibit P1C) — one of them being the appellant. The rally took place as scheduled; and when the appellant's turn came to make a speech, he contravened condition No. 14 of the licence issued by the O.C.P.D., as a result of which summons was issued against him.

In the Petition of Appeal, the appellant is dissatisfied with his conviction on the following two grounds: —

(1) that the learned trial Magistrate failed to consider an O.C.P.D.'s powers to impose conditions under section 27(2) of the Police Act No. 41 of 1967 were subject to the restrictions contained in Article 10(2) of the Federal Constitution; and

(2) that the learned trial Magistrate failed to consider condition 14 of Exhibit P3 infringed the fundamental rights of freedom of speech as PW1 (the O.C.P.D.) had no power under section 27 of the Police Act to impose condition 14 of Exhibit P3. Condition 14 was therefore *ultra vires* Article 10 of the Federal Constitution and therefore void.

It should be noted that these two grounds had in fact been dealt with by Chang Min Tat J. in the case of *Madhavan Nair & Anor.* v. *Public Prosecutor*[1] when the matter was referred to him under section 30(2) of the Courts of Judicature Act, 1964. It was